

Employee Benefits Security Admin., Labor

§ 2570.2

- 2570.134 Consequences of default.
- 2570.135 Consent order or settlement.
- 2570.136 Scope of discovery.
- 2570.137 Summary decision.
- 2570.138 Decision of the administrative law judge.
- 2570.139 Review by the Secretary.
- 2570.140 Scope of review.
- 2570.141 Procedures for review by the Secretary.

Subpart H—Procedures for Issuance of Findings Under ERISA Sec. 3(40)

- 2570.150 Scope of rules.
- 2570.151 In general.
- 2570.152 Definitions.
- 2570.153 Parties.
- 2570.154 Filing and contents of petition.
- 2570.155 Service.
- 2570.156 Expedited proceedings.
- 2570.157 Allocation of burden of proof.
- 2570.158 Decision of the Administrative Law Judge.
- 2570.159 Review by the Secretary.

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SOURCE: 53 FR 37476, Sept. 26, 1988, unless otherwise noted.

Subpart A—Procedures for the Assessment of Civil Sanctions Under ERISA Section 502(i)

§ 2570.1 Scope of rules.

The rules of practice set forth in this part are applicable to “prohibited transaction penalty proceedings” (as defined in § 2570.2(o) of this part) under section 502(i) of the Employee Retirement Income Security Act of 1974. The rules of procedure for administrative hearings published by the Department's Office of Administrative Law Judges at part 18 of this title will apply to matters arising under ERISA section 502(i) except as modified by this section. These proceedings shall be conducted as expeditiously as possible, and the parties shall make every effort to avoid delay at each stage of the proceedings.

§ 2570.2 Definitions.

For prohibited transaction penalty proceedings, this section shall apply in lieu of the definitions in § 18.2 of this title:

(a) *Adjudicatory proceeding* means a judicial-type proceeding leading to the formulation of a final order;

(b) *Administrative law judge* means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105;

(c) *Answer* is defined for these proceedings as set forth in § 18.5(d)(2) of this title;

(d) *Commencement of proceeding* is the filing of an answer by the respondent;

(e) *Consent agreement* means any written document containing a specified proposed remedy or other relief acceptable to the Department and consenting parties;

(f) *ERISA* means the Employee Retirement Income Security Act of 1974, as amended;

(g) *Final order* means the final decision or action of the Department of Labor concerning the assessment of a civil sanction under ERISA section 502(i) against a particular party. Such final order may result from a decision of an administrative law judge or the Secretary, or the failure of a party to invoke the procedures for hearings or appeals under this title. Such a final order shall constitute final agency action within the meaning of 5 U.S.C. 704;

(h) *Hearing* means that part of a proceeding which involves the submission of evidence, either by oral presentation or written submission, to the administrative law judge;

(i) *Notice* means any document, however designated, issued by the Department of Labor which initiates an adjudicatory proceeding under ERISA section 502(i);

(j) *Order* means the whole or any part of a final procedural or substantive disposition of a matter under ERISA section 502(i);

(k) *Party* includes a person or agency named or admitted as a party to a proceeding;

(l) *Person* includes an individual, partnership, corporation, employee benefit plan, association, exchange or other entity or organization;

(m) *Petition* means a written request, made by a person or party, for some affirmative action;

(n) *Pleading* means the notice, the answer to the notice, any supplement or amendment thereto, and any reply that

§ 2570.3

29 CFR Ch. XXV (7–1–09 Edition)

may be permitted to any answer, supplement or amendment;

(o) *Prohibited transaction penalty proceeding* means a proceeding relating to the assessment of the civil penalty provided for in section 502(i) of ERISA;

(p) *Respondent* means the party against whom the Department is seeking to assess a civil sanction under ERISA section 502(i);

(q) *Secretary* means the Secretary of Labor and includes, pursuant to any delegation of authority by the Secretary, any assistant secretary (including the Assistant Secretary for Employee Benefits Security), administrator, commissioner, appellate body, board, or other official;

(r) *Solicitor* means the Solicitor of Labor or his or her delegate.

§ 2570.3 Service: Copies of documents and pleadings.

For prohibited transaction penalty proceedings, this section shall apply in lieu of § 18.3 of this title.

(a) *General*. Copies of all documents shall be served on all parties of record. All documents should clearly designate the docket number, if any, and short title of all matters. All documents shall be delivered or mailed to the Chief Docket Clerk, Office of Administrative Law Judges, 800 K Street, NW., Suite 400, Washington, DC 20001–8002, or to the OALJ regional Office to which the proceedings may have been transferred for hearing. Each document filed shall be clear and legible.

(b) *By parties*. All motions, petitions, pleadings, briefs or other documents shall be filed with the Office of Administrative Law Judges with a copy including any attachments to all other parties of record. When a party is represented by an attorney, service shall be made upon the attorney. Service of any document upon any party may be made by personal delivery or by mailing a copy to the last known address. The Department shall be served by delivery to the Associate Solicitor, Plan Benefits Security Division, ERISA Section 502(i) Proceeding, P.O. Box 1914, Washington, DC 20013. The person serving the document shall certify to the manner and date of service.

(c) *By the Office of Administrative Law Judges*. Service of orders, decisions and

all other documents, except notices, shall be made by regular mail to the last known address.

(d) *Service of notices*. (1) Service of notices shall be made either:

(i) By delivering a copy to the individual, any partner, any officer of a corporation, or any attorney of record;

(ii) By leaving a copy at the principal office, place of business, or residence of such individual, partner, officer or attorney; or

(iii) By mailing a copy to the last known address of such individual, partner, officer or attorney.

(2) If service is accomplished by certified mail, service is complete upon mailing. If done by regular mail, service is complete upon receipt by the addressee.

(e) *Form of pleadings*. (1) Every pleading shall contain information indicating the name of the Employee Benefits Security Administration (EBSA) as the agency under which the proceeding is instituted, the title of the proceeding, the docket number (if any) assigned by the Office of Administrative Law Judges and a designation of the type of pleading or paper (e.g., notice, motion to dismiss, etc.). The pleading or paper shall be signed and shall contain the address and telephone number of the party or person representing the party. Although there are no formal specifications for documents, they should be typewritten when possible on standard size 8½ × 11 inch paper.

(2) Illegible documents, whether handwritten, typewritten, photocopied, or otherwise, will not be accepted. Papers may be reproduced by any duplicating process provided all copies are clear and legible.

[53 FR 37476, Sept. 26, 1988, as amended at 65 FR 7191, Feb. 11, 2000; 68 FR 17508, Apr. 9, 2003]

§ 2570.4 Parties.

For prohibited transaction penalty proceedings, this section shall apply in lieu of § 18.10 of this title.

(a) The term *party* wherever used in these rules shall include any natural person, corporation, employee benefit plan, association, firm, partnership,